

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of the Petitions of)	
Free Press et al.)	
)	
for Declaratory Ruling that Degrading an Internet)	RM- _____
Application Violates the FCC's Internet Policy Statement)	
and Does Not Meet an Exception for "Reasonable Network)	
Management")	
and)	
)	
Vuze, Inc.)	RM- _____
)	
to Establish Rules Governing Network Management)	
Practices by Broadband Network Operators)	
)	WC Docket No.
Broadband Industry Practices)	07-52
)	
)	
Commercial Availability of Navigation Devices)	CS Docket No. 97-
)	80

REPLY COMMENTS
of
CONSUMER FEDERATION OF AMERICA AND CONSUMERS UNION

It is clear that Comcast's treatment of Bit Torrent is discriminatory, violates the Internet Policy statement, and is not "reasonable network management." This was documented in the initial comments and will be further demonstrated in the replies of others. In these replies, we want to isolate the nature of the breach of the four principles and offer a straightforward remedy to the problem: the Commission can and should establish simple principles that govern "reasonable network management."

As the record shows, there are three basic approaches to dealing with congestion in a communications network. That is, one can:

- expand capacity, thereby eliminating scarcity; and/or
- ration by price, hoping that charging higher prices for the scarce resource will dampen demand; and/or
- manage traffic flow to alleviate the pressure on the scarce network resources.

Comcast has chosen to implement the third course in a thoroughly anti-consumer, anti-competitive manner. It surreptitiously impeded the flow of data from targeted applications and thereby eroded the quality of service provided by those applications.

- By behaving surreptitiously, it gives the consumer the misimpression that the service is the problem, when, in fact, the network is to blame.
- By behaving surreptitiously, it denies the service provider the opportunity to maintain the quality of service by utilizing network resources that are not scarce.
- By behaving surreptitiously, Comcast manages the network in a manner that ensures its quality of service is not reduced at the very same time that the quality of service provided by competing video services is impaired.

We cannot ignore the fact that the victims of this surreptitious impairment of services happen to be video consumers. This is no coincidence. Comcast reaps an economic benefit by impairing services that compete with its core video product.

Comcast's practices violate the network neutrality principles adopted by the FCC and are not an acceptable approach to "reasonable network management" contemplated by the statement of principles.

- Comcast has failed to fully inform the public about the nature of its service – failing to declare that certain applications will be impaired.
- Comcast's network management practices have the effect of denying or degrading the consumer access to applications of their choosing.

Neutral network management should have three characteristics.

- **Transparency:** Consumers and application service providers should be fully informed of network management practices that affect the availability and quality of service.
- **Scarcity:** Restrictions on the flow of data should be based on genuine scarcity. Above all, network operators should not reserve to themselves capacity or functionality that they deny to other service providers.
- **Opportunity:** Where network resources are scarce, application service providers should be informed and allowed to maintain service quality by utilizing network resources that are not in short supply. For example, the applications service provider could download the requested content from its server, where the network operator has declared that uploading capacity is constrained.

The statement of these principles will go a long way toward clearing up the ambiguity in the Internet Policy Statement and further the goal of preserving and promoting an open, interconnected Internet.

Gene Kimmelman
Vice President for Federal and
International Affairs
Consumers Union

Mark Cooper
Director of Research
Consumer Federation of America
February 28, 2008